IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO.47 OF 2006

Shri Adwait Bhalchandra Ranade ...Applicant

Versus

Shri Shantilal Dagadulal & Anr. ...Respondents

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Mr.S.V.Pitre for Applicant.

None for Respondents.

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CORAM: A.M.KHANWILKAR, J.

MARCH 29, 2006.

P.C.

1. Heard Counsel for the Applicant. I see no infirmity in the ultimate conclusion reached by the Trial Court in rejecting the application preferred by the Applicant for rejection of plaint by invoking provisions of Order VII Rule 11 of the Code of Civil Procedure, 1908. The Court below has noted that the relief claimed by the Applicant was not covered by the provisions of Order VII Rule 11 of the Code. It is further noted that it is not

the case of the Applicant/Defendant that the Plaint does not disclose cause of action or the Suit is undervalued or that from the statement of claim, it is possible to discern that the Suit is barred by law. The Court below has further observed that the Suit is for declaration and perpetual injunction.

2. Taking the last observation of the Trial Court as given, which position is supported by the reliefs claimed in the Plaint at pages 21 and 22, it is possible to take the view that to that extent, the Suit will have to proceed. Even if the Applicant is justified in contending that no relief of specific performance can be granted in respect of the development agreement that however does not preclude the Civil Court from adjudicating the claim of the rival parties, particulary for declaration and perpetual injunction.

3. Viewed thus, the question of rejecting Plaint under Order VII Rule 11 of the Code in such a sitution will not arise. Hence, this Revision fails. The same is rejected.

4. It is made clear that the Suit will be decided on its own merits in accordance with law, uninfluenced by the observations made in the impugned order or for that matter, in the present order. Dismissed.

A.M.KHAWILKAR, J.